



Paper No. 4

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OFFICE OF PETITIONS

In re Application of
Takaki, et al.
Application No. 10/091,234
Filed: March 5, 2002
Attorney Docket No. 0211/LH

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: DECISION DISMISSING
: PETITION
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This is a decision on the petition under 37 CFR 1.10(d), filed March 28, 2002, requesting that the above-identified application be accorded a filing date of March 4, 2002, rather than the presently accorded filing date of March 5, 2002.

Petitioners request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on March 4, 2002.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a).

(Emphasis supplied). Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

(Emphasis supplied).

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." Evidence from the USPS may be, for example, the Express Mail Corporate Account Mailing Statement or a statement by an appropriate official of the USPS that according to a USPS record the "date-in" on petitioners' Express Mail receipt is erroneous accompanied by a copy of the relevant USPS record. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be, for example, a log book which contains information such as the Express Mail label number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of the log book entry.

Petitioners have not submitted Express Mail mailing label no. EV044465440US. However, petitioners have submitted a copy of the USPS Pickup Service Statement that lists Express Mail Label No. EV044465440US. Unfortunately, the name of the person signing the statement, and more importantly, the date and time of the pickup, are illegible. Presumably this can be remedied by adjusting the darkness control on petitioners' photocopying machine. Petitioners are urged to submit a reconsideration petition with a legible date of pickup on the Statement.

The photocopy of the Patent Office Express Mail Record submitted with the petition is not persuasive corroborative evidence of a March 4, 2002 Express Mail deposit because there is no statement from the person who created the entry attesting to the fact that the entry came into existence AFTER the time the package associated with Express Mail Label No. EV044465440US was deposited in Express Mail.

Since the petition filed March 28, 2002, is not accompanied by the corroborating evidence required by the rule, the petition is dismissed.

The application is being forwarded to Technology Center 2600 for examination in due course with a filing date of March 5, 2002.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.



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